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ABSTRACT

Innovations in technology have enabled homeowners to pirate satellite signals intended for cable television operators through the use of home earth-stations. Section 605 of the Communications Act of 1934, which governs reception of signals, is inadequate to regulate this situation because it appears that publication of received programing outside the home is needed to constitute a violation. Because home stations merely receive, they are legal. Copyright laws might apply in this situation, but piracy constitutes a "fair use" exception by default, because the fact that it is done in the home makes policing it nearly impossible and highly intrusive. Law enforcers cannot know if the home station is tuned to a pay or free channel. Since scrambling of satellite signals is not cost effective, and no law is directly applicable or enforceable, piracy of these signals is effectively legal. (Author/HTH)

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Piracy of Satellite Signals by Domestic Receive-Only Earth Stations

by
Steven D. Homan

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Today's society is very dynamic. The constant, accelerating changes in one highly volatile area, however, often leave a more entrenched area far behind and struggling to catch up.

Such is the case with the areas of technology and the law -- more specifically, communications technology and laws regulating it.

To anyone even vaguely familiar with the history of the 20th century, the incredible changes in communications are obvious. From the wire to the radio to the television set, before the dust had settled from one development, another had sprung up.

Some of the more recent developments and applications are those of cable television, the use of satellites to distribute signals to cable operators, and the use of receive-only home stations to "pirate" those signals. Unfortunately, an important regulation, the Communications Act of 1934, has not kept pace with them, nor does any law or judicial decision appear to conclusively cover the piracy issue.

Signals are being and will be stolen by anything from a home-made dish contraption to an expensive "Star Wars"-like silver bowl.

The Communications Act is inadequate because its meaning is far from plain. Does it regulate mere reception of signals, or does it require divulgence without the home before it regulates?

Copyright laws seem to apply but may not. If they do, such piracy may constitute a "fair use" exception to them.

And, given all that, none of it may matter one tiny bit. What one does in the privacy of one's home may be no one's business but his own. And, any law governing this issue may be unenforceable simply because it is hard to determine whether a piracy has actually occurred.

The purpose in writing this paper is to describe some of the technology, discuss the three main, pertinent, federal regulations -- the Communications Act of 1934, the Copyright Act of 1976, and the constitutional right of privacy, discuss briefly other relevant issues, and describe possible solutions to the interception of signals by individual homeowners.

In compiling sources for this paper, the method used was primarily legal research of cases, texts, and periodicals.

Because no case has been decided yet on this narrow issue,[1] legal research was focused on federal District, Circuit, and Supreme Court cases which dealt with the regulations stated above.

Technology

The basic satellite-cable system is that of an antenna in the form of a receive-only dish operated by a local proprietor, and cables connecting the dish with individual paying subscribers' homes.[2]

On October 18, 1979, the Federal Communications Commission, FCC, deregulated domestic receive-only earth stations in order to ". . . eliminate unnecessary paperwork, simplify application procedures, (and) encourage rapid and wide dissemination of technological innovation . . . " said Chairman Charles Ferris.[3]

Today, demand is outstripping the supply, so rapid has the dissemination of technology been. As of November 19, 1979, nine geo-stationary satellites orbited coincidentally with the Earth's rotation. Satellite space is becoming scarce.[4] Firms such as Western Union, the American Telephone and Telegraph Co., and RCA Corp., have built them in order to lease transponders (relayers) to programmers.[5]

Almost any spot in the United States could potentially receive 156 channels simultaneously. Adding Canadian signals, the total is 192. Program offerings include first-run un-cut, uninterrupted movies, Las Vegas nightclub acts, live sports, children's shows, religious shows, and news up to 24 hours per day. Additionally, satellites over both oceans provide over 100

channels of international programming to parts of America. All of this comes with excellent quality of reception.[6] Small wonder, then that the potential market for programmers is huge.

With simplified application procedures that market could be reduced because homeowners can more easily acquire their own backyard station, provided that they can afford the equipment.

True to supply and demand economics, as demand has gone up, prices have gone down. That, along with improved technology, has lowered the cost to $7,940, for a dish with a diameter of 11 feet,[7] from a cost of $75,000 as recently as 1975.[8] By purchasing the component parts only, the price is lowered to $4,000,[9] and the station could be built by those with a fair technical background for only $200 by 1981-82,[10] whereas subscribers pay $15-$22 monthly.

Although by 1985-90 only a 2-foot dish will probably be needed, today a 10-foot parabolic antenna is recommended, tuned to a range of radio-wave frequencies between 3700-4200 megahertz. Additionally, a signal booster (low noise amplifier) and a receiver (translator) are needed.[11]

In deregulating earth stations, the FCC gave consumers the choice of whether to get a license. Not having to get one means considerable savings in the cost of preliminary frequency clearance procedure. Without a license, however, the station owner would have no right to complain about pathway interference to his signal reception.[12] Such is an added cost of a station.

Most distributors of premium pay programming, foreseeing the further lowering of the cost of terminals, cite an urgent need for some kind of control.[13]

Control in the past of similar problems fell under the Communications Act of 1934, 47 U.S.C. §605 (1968). Most of the controversy with respect to home stations swirls around that section of the Act.

Communications Act of 1934

Much of the debate concerns either the general, overall meaning of §605, or, more specifically, the words ". . . shall divulge or publish . . . shall intercept . . . and divulge or publish . . . shall receive . . . and use . . . for his own benefit or for the benefit of another . . . (section) shall not apply to . . . (a) broadcast . . . for . . . the general public." A relevant issue is whether both interception and publication are needed for a violation since home earth stations are usually engaged only in reception. (See Fig. 1).

One federal District Court stated that §605 provides a mantle of privacy for all communications, except radio and television broadcasts intended for the public.[14] Another found the purpose to be the protection of the integrity of the communications system, and against blatant encroachments on the privacy of messages.[15] A Circuit Court decided that §605 is remedial and must be given liberal construction,[16] while a District Court wanted to construe it strictly, thereby requiring both interception and divulgence.[17]

Other courts merely stated that the section must be interpreted in the light of reason and common understanding in order to find Congress' intent,[18] and must not be given a "Humpty-Dumpty" (Alice in Wonderland) construction: "when I use a word, it means

just what I choose it to mean--neither more nor less."[19] But perhaps the inherent ambiguity of the section has no "plain-meaning."

A variety of courts yields a variety of interpretations. The federal administrative body, the FCC, states singly that, since satellite communications are not for the general public, even

Figure 1

47 USC §605 - Unauthorized publication or use of communications

Except as authorized by chapter 119, Title 18, no person receiving, assisting in receiving, transmitting, or assisting in transmitting, any interstate or foreign communication by wire or radio shall divulge or publish the existence, contents, substance, purport, effect, or meaning thereof, except through authorized channels of transmission or reception, (1) to any person other than the addressee, his agent, or attorney, (2) to a person employed or authorized to forward such communication to its destination, (3) to proper accounting or distributing officers of various communicating centers over which the communication may be passed, (4) to a master of a ship under whom he is serving, (5) in response to a subpoena issued by a court of competent jurisdiction, or (6) on demand of other lawful authority. No person not being authorized by the sender shall intercept any radio communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person. No person not being entitled thereto shall receive or assist in receiving any interstate or foreign communication by radio and use such communication (or any information therein contained) for his own benefit or for the benefit of another not entitled thereto. No person having received any intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of such communication (or any part thereof) knowing that such communication was intercepted, shall divulge or publish the existence, contents, substance, purport, effect, or meaning of such communication (or any part thereof) or use such communication (or any

> information therein contained) for his own benefit or for the benefit of another not entitled thereto. This section shall not apply to the receiving, divulging, publishing or utilizing the contents of any radio communication which is broadcast or transmitted by amateurs or others for the use of the general public, or which relates to ships in distress. As amended June 19, 1968. Pub.L. 90-351. Title III, §803.82 Stat. 223.

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the mere reception of them is a violation.[20]

Perhaps the best method of determining the section's meaning is to look at its legislative history.

That history appears to indicate that §605 was written to provide privacy for common carrier radio transmissions, and that Congress knew it could not outlaw mere passive reception.

A Senate Report of April, 1934 stated that §605 prohibits unauthorized publication of communication, and that it is based on §27 of the Radio Act of 1927.[21] (Emphasis added.) A House of Representatives Report of June 1934 repeated that statement, adding that the section also applies to wire communication.[22] Another House Report had entitled §605 "Unauthorized Publication of Communication."[23] (Emphasis added.)

Section 27 of the Radio Act of 1927 is the same as §605.[24]

Going back to the Radio Act of 1912, it seems even clearer that Congress knew that passive reception could not be regulated. The pertinent section, 19, is entitled "Secrecy of messages," and states in part, "No person . . . having knowledge of the operation of any station . . . shall divulge or publish . . . any messages . . . ."[25]

Including the fact that the signals received by home satellite

stations are the same radio frequency energy as, for example, ship to shore transmissions, mere reception by earth stations appears legal.[26]

Still another question is whether in §605, the words "use for his own benefit or (that) of another" apply to the benefit accrued by the avoidance of paying subscription rates in the same way as they do to the benefit received by having knowledge of a private radio message.[27]

All in all, the section's meaning is anything but clear, nor has any final arbitration decided the matter.

While no conflict has yet been brought to court on the narrow issue at hand, insight to a possible outcome can be gained by looking at cases which involved §605.

In KMLA Broadcasting Corp. v. 20th Century Cigarette Vending Corp., a District Court held against the 20 Century Corp. for having provided the means by which to intercept FM radio multiplex transmissions which were intended to be received only by paying subscribers.[28]

The key reasons for the result were that special equipment was necessary for reception, and that the transmissions were disclosed in a public place.[29] The selling of such equipment to subscribers implies strongly that KMLA did not intend that its programs be heard other than by subscribers. Thus, it was not a "broadcast to the general public" in the words of the statute. Also, disclosing the programs in a public place, obviously, means that they were probably "divulged or published."

The results of KMLA compare favorably with those of two New York 1979 district cases, Home Box Office v. Pay TV of Greater N. Y.[30] and Orth-O-Vision v. Home Box Office.[31] In Pay TV, signals were transmitted to affiliates by a multi-point distribution service--omni-directional micro-waves. Even though signals spread out over the entire public, reception was possible only by the use of, again, special equipment. The court held that §605 prohibits interception of signals not meant for the general public, and that the selling of special signal "descrambling" equipment creates a point-to-point transmission, not a general one. The court in Orth-O-Vision held similarly.

In the case of home earth stations, special equipment is needed but no more so than common, broadcast TV. Also, signals are not scrambled, necessitating descramblers. The subscription rate of cable-TV is being by-passed by potential subscribers' collection of the signals directly. The intent of programmers is, however, that no one receive the programs who has not paid. With respect to programmer's intent, home station owners would lose a court battle. In KMLA, though, a strong factor was the disclosure in a public place, not an individual's private home.

In one of the first important cases decided under the Communications Act of 1934, Nardone v. U.S., contested in 1937, the Supreme Court held, with respect to wiretapping, that the statute forbade any unauthorized person from intercepting a telephone message, and that the message should not be divulged.[32] Under Nardone, divulgence appears to be needed for a violation to occur. Apparently, however, the issue had not been decided.

In another Supreme Court case, the court stated, regarding wiretapping by state law enforcement officers, that bedause both interception and divulgence were present, they need not decide whether both elements are necessary for a violation of §605.[33]

Thus, although the publishing of the contents of a message seems to be important, the issue is not closed.

Other related issues discussed by the courts include inadvertent interception, such as a switchboard operator overhearing a conversation. The court held that only wilful violations are punished.[34] Certainly with respect to earth stations, interceptions are wilful.

Interception itself occurs when both parties to a communication do not consent, irrespective of the means used.[35] Again, regarding home terminals, interception clearly takes place.

Divulgence occurs when the intercepted message is given to a third person without the consent of the sender. Even when the intercepter had not actually listened herself divulgence took place, as happened to a telephone operator shunting calls into a conference room.[36]

Overall it appears that backyard earth stations are legal under the current statute and case histories.

The judicial system has yet to clearly decide the issue. One point stressed is that the integrity of the communications connection must not be disturbed. In this respect, home terminals would lose any case brought before the courts because the intent of the sender is that only subscribers receive the signal.

Both the courts, in part, and the general meaning of the statute, however, indicate that divulgence of the communication is a prerequisite of violation. Consequently, here the home stations would win.

The most important point to be made is that the legislative history clearly shows that the protection of message secrecy was the intent of Congress. Since Congress is the law-making branch of government, their will deserves deference.

Copyright Act of 1976

Along with the Communications Act of 1934, the Copyright Act of 1976 is relevant. (See Fig. 2).

It is pertinent even though some authors do not believe that it covers the narrow question at hand. It is thought that the rights of the Act stop at the homeowner's door, and that it is irrelevant because no copying is involved, no public use is made of the copyrighted works, no secondary transmissions are made, and no commercial use is made.[37] In short, because no exclusive rights in copyrighted works are involved. (See Fig. 2).

The Supreme Court, however, in Twentieth Century Music Corp. v. Aiken,[38] stated that when technological change has rendered the literal terms ambiguous, the Copyright Act must be construed in the light of its basic purpose. The purpose of the Act, according to the court in Aiken, is to permit the copyright owner to get a fair return and thereby to stimulate creativity. Even though this must be balanced against the public right to access to works,[39] and the additional Supreme Court statement that the

Act be interpreted in favor of the public benefit,[40] little justification can be seen in bolstering a public benefit which is gained by the intentional avoidance of financial obligations by the use of new technology.

Laying the groundwork for copyright protection, Starscan, a division of Gardiner Communications, has announced a new earth station home terminal package for the direct-to-home market. All orders will be placed through the National Registration Bureau for Home Satellite Services. By qualifying under the Compulsory Section of the Copyright Act, the same as a cable TV system, the Bureau can be responsible under the Act for payments. All hardware suppliers, according to Starscan, could cooperate in the registration effort through the use of purchase records.[41]

The copyright law of the Federal Republic of Germany used as a model, could yield another solution. In it, a copyright owner can demand a remuneration from the manufacturer of any equipment used in copying for noncommercial purposes. Money is collected by collection agencies. This is consistent with views of American socio-economic theorists that costs are best borne by those most effectively able to control them.[42]

Figure 2

17 USC §106 - Exclusive rights in copyrighted works
Subject to sections 107 through 118, the owner of copyright under this title has the exclusive rights to do and to authorize any of the following:
1. to reproduce the copyrighted work in copies or phonorecords;
2. to prepare derivative works based upon the copyrighted work;
3. to distribute copies or phonorecords of the

> copyrighted work to the public by sale or other transfer of ownership, or by rental, lease, or lending;
> 4. in the case of literary, musical, dramatic, and choreographic works, pantomimes, and motion pictures and other audiovisual works, to perform the copyrighted work publicly; and
> 5. in the case of literary, musical, dramatic, and choreographic, or sculptural works, including the individual images of a motion picture or other audiovisual work, to display the copyrighted work publicly.
> Pub.L 94-553, Title I, §101, Oct. 19, 1976, 90 Stat. 2546

Given that the Copyright Act does apply, does one of the exceptions to a copyright owner's exclusive rights, that of "fair use," justify a terminal user's avoidance of his obligations?

Section 107, 17 U.S.C. §107 (1976), "Limitations on exclusive rights: Fair use," states:

> Notwithstanding the provisions of section 106, the fair use of a copyrighted work, including such use by reproduction in copies or phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright.

Fair use is the privilege of a person other than the copyright owner to use copyrighted material in a reasonable manner without the owner's consent.[43] According to a New York District Court and a New York Circuit Court, the fair use doctrine, is entirely equitable and therefore so flexible as to defy definition, requiring a case-by-case application technique.[44]

Some of the factors to be considered are:[45]

> (1) the purpose and character of the use, including whether such use is of a commercial nature or

is for nonprofit educational purposes;
(2) the nature of the copyrighted work;
(3) the amount and substantially of the portion used in relation to the copyrighted work as a whole; and
(4) the effect of the use upon the potential market for or value of the copyrighted work.

Other factors include whether the copy is used for parody, public benefit and interest, or shortening working time.[46]

One District Court stated that the most important factor was the harm caused to the potential market, but in the face of rapid technological change courts need to be flexible. The court continued by stating that any harm imperiling the existence of a market is much less of a fair use than one which merely limits the potential profits.[47]

Additionally, courts consider whether the use is only for recreation, and whether it is done in good faith.[48]

Looking at cases which dealt with fair use will help to understand it.

Regarding home audio-taping of sound and musical compositions it is said that such taping is so harmless as to have negligible effect, and that the public has come to accept taping because of the great convenience.[49]

A District Court held that when sketches of a copyrighted film of the assassination of President Kennedy was used in a book, the public interest was served and also little economic injury occurred to the plaintiff.[50]

In another District Court case, the creation of a personal name index to the New York Times Index was upheld as a fair use.

The court stated that where a copyrighted work is more of a work of diligence than of creativity, the defendants have greater license, even though financial gain was their goal.[51]

The broadcast of a copyrighted film with the knowledge that payment was expected was held to be in clear violation, while the publishing of 20-year-old letters of unclear value was also held to be a violation.[52]

In two relatively old cases, the display of copyrighted puppets in the background of a Captain Kangaroo TV show was upheld because such display probably enhanced their sales capacity, yet the TV parody of a musical play was struck down even though no competition or injurious effect took place.[53]

Decisions are indeed made on a case-by-case basis.

In the case of home earth stations' intercepting of satellite signals, the argument is made that such is a fair use because only minimal detrimental effects could ever take place. The reasons are: terrain, buildings and trees will interfere with a great many antennae; the price is too high yet, no one will pay $16,500 for a good set-up when $16.50 paid monthly is the subscription rate; some city ordinances make the erection of 10- to 16-foot dishes almost impossible; the average roof will not hold such large, unwieldy objects; and interference from terrestrial microwave links will reduce the stations' value.[54]

Most of those problems are easily surmountable, however. Terrain and buildings will only interfere with the reception of some signals depending on the direction from which they come. Prices are falling rapidly, and will be reasonable very soon.

Terminals often can be placed in backyards rather than on roofs. And the interference problem can be solved by paying for frequency coordination, as stated above.

Also, although market damage is slight on an individual scale, the cumulative effect could create problems.[55] And, a District Court held that even a small usage may be unfair if it is of critical importance to the work as a whole and is taken by the defendant merely to save time and expense (such as the paraphrasing of a psychology book).[56]

Clearly then, the interception of satellite signals does not constitute a fair use exception to the Copyright Law of 1976, and such use is illegal. It is not criticism, comment, news reporting, teaching, scholarship or research. The purpose of the use is to gain financially, the use is substantial (all of the copyrighted work is used), and the cumulative effects on the market could be large. It is not parody, nor a public benefit, nor a shortening of work time. It is done for recreational purposes.

Most importantly, the use is unfair because it is not done in good faith.

The case most nearly on point with home terminals is "the Betamax case," Universal City Studios, Inc. v. Sony Corp. of America, decided in a District Court.

In the case, recordings were made by the defendant of free, broadcast, audio-visual signals. The court held that neither Copyright Act, 1909 or 1976, gave a copyright owner a monopoly with respect to individual off-air copying in the home for a

private, non-commercial use.[57]

The central factor in "Betamax" was the proven absence of harm. After seven years of increasing sales of Betamax equipment, no great harm had accrued.[58] Whereas the harm potential is still very real regarding home satellite terminals, and no one can extrapolate accurately from audio-visual recordings to satellite signal interception.

An additional factor in both "Betamax" and audio taping is the difficulty of enforcement. The fact that it is done in the home makes policing it nearly impossible and in any event highly intrusive.[59] Thus the home piracy of satellite signals may be a fair use by default, because it is just too hard to enforce.

A cogent argument against such reasoning, concerning sound recording, is made by Professor Melville Nimmer: "that hardly constitutes a principled ground for conferring governmental approval on a practice potentially capable of substantially undercutting the value of a sound-recording copyright."[60]

The Right of Privacy

The right of privacy may protect a signal pirate because policing is so difficult and because pirating done in the home may be no one's business but the homeowner's.

Supreme Court Justice Brandeis in an 1890 Harvard Law Review issue stated that the right to be left alone is "the most comprehensive of the rights, and the one most valued by civilized man."[61] Others believe that privacy is needed for personal growth, mental health, antonomy, human relations, meaningful lives, and a democratic government.[62]

It is safe to say that privacy is hard to define or quantify.[63]

In the past it has been associated with tort law: an unreasonable intrusion on the seclusion of another; an appropriation of another's name or likeness; a disclosure of private facts; or a placing of another in a false light before the public.[64]

Even with the judicial creation of a Constitutional right of privacy, the right must have some application to tort liability, although an expansion to include any "affront to human dignity" may yet occur, according to Dean Prosser.[65]

The judicial creation of a Constitutional right of privacy took place with the declaration that the "penumbra" of the Bill of Rights included such a privacy right. The penumbra extends from the First Amendment (the right of association), the Third Amendment (the prohibition against the quartering of soldiers in a home in peace time), the Fourth Amendment (the right to be free from unreasonable searches and seizures), the Fifth Amendment (the right not to self-incriminate), and the Ninth Amendment (the Constitutionally unenumerated rights retained by the people).[66]

The Constitutional right of privacy has not been clearly defined, but decisions have extended it to marriage, procreation, family relations, person, home, political associations, confessionals, psychiatrists' offices, voting booths, and jury rooms.[67]

At the heart of privacy law is the balancing of competing interests. Privacy is an area of man's life in which, in any given circumstances, a reasonable man with an understanding of the legitimate needs of the community would think it wrong to invade.[68] But it is obvious that privacy must give way sometimes

to other important interests such as law enforcement, freedom of expression, and the research and verification of data.[69]

Two cases illustrate well the issue of whether a privacy right extends to protect law-breaking within the home.

The Supreme Court in Stanley v. Georgia held that a state has no business telling a person, sitting alone in his house, what book to read or film to watch, whatever the justification of the statute. In Stanley, a man had an obscene film in his home, but the Court stated that the whole Constitution rebels against telling people what to think, and that the state's theories that possession leads to anti-social conduct and is incident to the distribution of obscenity were not grounds enough to prohibit home possession.[70]

In Ravin v. Alaska, the Alaska Supreme Court struck down a statute prohibiting marijuana use in the home as being violative of privacy. While the court ruled that privacy is a fundamental right, it stated that marijuana smoking is not, and so applied the rational basis test rather than the compelling state interest test.[71]

The compelling state interest test is applied to a statute when a fundamental right is at stake. The right is denied only on a strict showing that it is detrimental to health, welfare, or morals. The state has the burden of proof. The rational basis test is applied to a less fundamental right, and the statute must be reasonably related to the state's goals for it to be upheld.[72]

Alaska failed to prove its statute's rationality because no proof existed regarding marijuana's addictive effects, its anti-

social effects, nor its home use as being the cause of greater distribution of the drug. Additionally, society arguably has recognized marijuana use as reasonable, because 26 million people have used it themselves.[73]

Under Ravin, the right of privacy could become extremely important in extending protection to other acts in the home, such as the interception of satellite signals.

But the reasoning in Ravin was inconsistent. The court labelled home privacy as fundamental, but applied only an intermediate scrutiny. This suggests that the right of privacy exists solely in conjunction with Constitutional guarantees such as free speech (the obscene film in Stanley), or perhaps marriage, procreation, family relations, education, and so on.[74]

The National Organization for the Reform of Marijuana Laws tried to bootstrap the Stanley decision into a fundamental right that would in fact protect all acts in the home, in this case marijuana smoking, but a District Court ruled against it, because marijuana smoking is not a fundamental right.[75]

Overall, piracy of satellite signals cannot be justified as being protected by a right of privacy in the home, although the issue is close.

Balancing competing interests, a reasonable man might argue that since no great harm has been proven to be caused by piracy, an expectation of privacy exists therein. Future cumulative effort may, however, be great, and, most importantly, it is hard to justify the avoidance of financial charges.

Since the viewing of satellite TV programming is not a fundamental right the rational-basis test would be used, and the same argument can be made that any law prohibiting piracy would fail such a test because no proof exists of harm. Again, because of a lack of good faith by the terminal owner, that argument does not work.

Another problem area of any law regulating home earth stations is the difficulty of enforcement. Although, as Professor Nimmer said, it is hard to justify that as a basis for approving piracy, it may realistically be the deciding factor.

No practical way exists to force a man to say whether he is tuned in to a free or a pay transponder.[76] The Fourth Amendment to the Constitution prohibits unreasonable searches and seizures. U.S.C.A. Const. Amd. 4.

Searches without the warrant of a judicial practitioner, such as a judge or magistrate, are per se unreasonable with only a few exceptions.[77]

Even with broad Constitutional authority, the courts have taken a case-by-case approach regarding the issuing of warrants, attempting to balance the need for the search with the need for privacy.[78] Unique sensitivty, however, is used in favor of protecting the home,[79] yet the homeowner must prove a legitimate expectation of privacy.[80]

Warrants must be issued only when there is probable cause to believe that a violation exists. U.S.C.A. Const. Amd. 4. Probable cause must be based on facts and circumstances as they appear to the police officer at the time, or, if based on hearsay,

be strongly backed-up with affidavits.[81] Affidavits do, however, have a presumption of validity, and may be attacked only by an offer of proof.[82]

It is probable that a search of a house would produce no conclusive evidence that the homeowner had tuned into a pay channel. The only remedy would be to simply seize the earth station, but that would probably be based at best on hearsay evidence, and consequently very shaky.[83]

While the FCC has deregulated domestic receive-only earth stations, it has not backed away from piracy. It states:[84]

> We believe, as a matter of experience, that licensing is not an effective means of enforcing Section 605 because revocation proceedings are time consuming and require a significant investment of Commission resources. We agree with the Justice Department's contention that other more effective enforcement mechanisms are available. Civil remedies may accrue from violations of Section 605 and Federal Copyright Laws are applicable to much of the material carried via domestic satellite. In addition, some provisions of the 1968 Omnibus Crime Control Act make the mere interception of protected communications a federal crime, 18 U.S.C. 2511 et. seq. (1976) and may afford a special civil right of action. Furthermore, our other administrative remedies include imposition of forfeiture or issuance of a cease and desist order. Moreover, we recognize that as an alternative to legal enforcement of Section 605, programming parties have the option of scrambling the signal transmitted and thus making unauthorized reception and use much more difficult.

With the near impossibility of forcing a man to disclose his channel selection, the FCC's final suggestion seems most plausible, that of scrambling the transmittal signals.

But scrambling is not yet cost-effective. Any financial

gain would be negated by the cost of adding technicians and equipment to scramble and descramble. Also, it may not work because it will add ultimately to the monthly rates of the subscriber, in addition to the extra cost of repairs. And, the question as to whether cable operators will be willing to pay for a descrambler for one signal while a different one needs no decoder is not resolved. Finally, scrambling techniques will probably be leaked because of the money at stake and the large number of technicians involved.[85]

Conclusion

Dealing with the three main aspects of the problem, it appears that although piracy is illegal in theory, in practice it is not--at least until a workable scrambling system is created--because laws cannot be enforced against it.

The intent of 47 U.S.C. §605 is to protect the secrecy of messages, and, because no divulgence takes place, the pirates break no law.

But, as stated above, piracy does fall under the Copyright Act of 1976, and is not fair use because it is done merely for entertainment and financial purposes, and not done in good faith.

The lack of good faith, again, and the cumulative detrimental effect on the market negate any claim that no harm arises and that the rational-basis test fails, thereby striking down any claim of privacy by terminal owners.

Other Issues

A related issue is the common ownership of an earth station by 10-12 homeowners.[86] Is the signal distributed throughout a complex of homes merely passively received?

Another problem is that of the liability of manufacturers and retailers. Do they contribute to any copyright violation? Feelings are mixed in the industry. Some are afraid that they could be liable, others have no fear.[87] In the "Betamax case," the court decided that no contributing violation took place.[88]

Still another issue is raised by the interception of signals relayed by international satellites. Several treaties appear to prohibit such reception, but no enforcement mechanism exists so their effect is in doubt.[89]

Possible Solutions

A bill passed overwhelmingly by the U.S. House of Representatives' Commerce Committee on July 31, 1980 would penalize those who deliberately intercept subscription communications, and would reserve its stiffest punishment for those who pirate a communication for financial gain. Such communications include ones pirated by home earth stations.[90]

The bill, H.R. 7747, an amendment to the Communications Act of 1934 may not be introduced to Congress in January, 1981 because Congressman Richardson Preyer (D-N.C.), its sponsor, was not re-elected.

Something like this bill is needed to fill the void being

created by the advancement of technology and the intrenchment of the Communications Act of 1934.

Footnotes

[1]Satellite Communications, December, 1979, p. 36.

[2]Midwest Video Corp. v. FCC, 571 F.2d 1025, 1026 (8th Cir. 1978).

[3]"Commission Deregulates Receive-Only Terminals," Satellite Communications, December, 1979, p. 18. See also Charles Ferris, "Separate Statement of Chairman. In Re: Deregulation of Receive-Only Domestic Earth Stations," (of the Federal Communications Commission), October 18, 1979.

[4]"Communications Satellites: The Birds are in Full Flight," Broadcasting, November 19, 1979, p. 36.

[5]Robert Cooper, "The TV Den," Video, October, 1979, p. 44.

[6]Ibid., pps. 44, 82.

[7]United States Tower Co.; July 10, 1980 Prices; P.O. "S," Afton, OK. 74331.

[8]Cooper, "The TV Den," p. 78.

[9]Lucy Huffman, "Home Satellite Terminals--Boom or Bane?" Satellite Communications, December, 1979, p. 28.

[10]Cooper, "The TV Den," p. 78.

[11]Ibid., pps. 82, 87.

[12]Federal Communications Commission Report No. 15268, "FCC Deregulates Domest. Satell. Receive-Only Earth Stations," Docket No. 78-374.

[13]"Commission Deregs. R-O," Satell. Comm., p. 22.

[14]KMLA Broadcasting Corp. v. 20th Century Cigarette Vending Corp., 264 F. Supp. 35, 39 (C.D. Cal. 1967).

[15]U.S. v. Kusso, 250 F. Supp. 55, 58 (D.C. Pa. 1966).

[16]Sablowsky v. U.S., 101 F.2d 183, 190 (Pa. Cir. 1938).

[17]Pugash v. Klein, 193 F. Supp. 630, 640 (D.C. N.Y. 1961).

[18]U.S. v. Cuvello, 410 F.2d 536, 542 (C.A. N.Y. 1969).

[19]Kratz v. Kratz, 477 F. Supp. 463, 470 (E.D. Pa. 1979).

[20](Oct. 10, 1978) 43 Federal Register No. 196, Dkt. No. 78-28522, "Unauthorized Interception and Use of Satellite Transmissions," pp. 46581-582. See also 74 F.C.C. 205, 216.

[21]Senate Report No. 781, 73d Cong., 2d. Sess. 9770 (4-17-1934).

[22]H.R. Rep. No. 1850, 73d Cong., 2d Sess. 9776 (6-1-1934).

[23]H.R. Rep. No. 1918, 73d Cong., 2d Sess., 9776 (6-4-1934). See also H.R. Rep. No. 1179, 71st Cong., 2d Sess. 9192 (4-15-1930)., and Sen. Rep. No. 1578, 71st Cong.. 3d Sess., 9323 (1-26-31), H.R. Rep. No. 221, 72d Cong., 1st Sess., 9491 (1-21-32), Sen. Rep. No. 1045, 72d Cong., 2d Sess., 9647 (1-10-33).

[24]H.R. Rep. No. 1880, 69th Cong., 2d Sess., 8688 (1927). See also: Sen. Doc. No. 200, 8713, and H.R. Rep. No. 404, 69th Cong., 1st Sess. 8532 (1926); Cong. Record--House 10985 (June9, 1934).

[25]287 Stat. 19 (1912).

[26]Fred Hopengarten, CQ--The Radio Amateur's Journal, August, 1980, p. 46.

[27]John Pellegrin, "Continuing Responsibilities in a Deregulated Environment," Satellite Communications, December, 1979, p. 38.

[28]KMLA, 264 F. Supp. at 35, 42.

[29]Ibid., at 42.

[30]HBO v. Pay-TV of Greater N.Y., 467 F. Supp. 525, 526, 528 (E.D. N.Y. 1979).

[31]Orth-O-Vision v. HBO, 474 F. Supp. 672, 682 (S.D. N.Y. 1979).

[32]Nardone V. U.S., 302 U.S., 58 S.Ct. 275, 277 (1937). date

[33]Benanti v. U.S., 355 U.S. 96, 78 S.Ct. 155, 157. See Rathbaum v. U.S., 355 U.S. 111, 78 S.Ct. 161, 162, and U.S. v. Fuller, 202 F. Supp. 356, 359 (D.C. Cal. 1962).

[34]Pugash, 193 F. Supp. at 639. See U.S. v. Axselle, 604 F.2d. 1330, 1333 (1979). incomplete citation

[35]U.S. v. Polakoff, 112 F.2d 888, 889 (C.C.A. N.Y. 1940). See also: U.S. v. Sugden, 226 F.2d 281, 284 (9th Cir. 1955); U.S. v. Pasha, 332 F.2d 193, 198 (7th Cir. 1964); U.S. v. Campagnuolo, 592 F.2d 862 (5th Cir. 1979); For definition of consent: Cuvello, 410 F.2d at 542; and Kusso, 250 F. Supp. at 59.

[36]U.S. v. Gruber, 123 F.2d 307, 309 (C.C.A. N.Y. 1941).

[37]F. Hopengarten, "They Haven't Outlawed Short-wave Yet," Satell. Comm., December, 1979, p. 39. See also: "On Nimmer on Copyright," 26 UCLA L. Rev. 925, 958 (1979); E. Aleinikoff, "Fair Use and Broadcasting," in Fair Use and Free Inquiry, ed. by J. Lawrence and B. Timberg (Norwood, N.J.: Ablex Publ. Corp., 1980),

p. 187; and "Copyright: gone with Betamax," 8 N.Y.U. Rev. L. and Soc. Change 45, 53 (1978-79).

[38]20th Century Music Corp. v. Aiken, 422 U.S. at 156, 95 S.Ct. at 2044.

[39]"Betamax," 8 N.Y.U. Rev. L. Soc. Change at 45.

[40]Aleinikoff, "Fair Use," p. 186.

[41]CableVision, September 10, 1979, p. 14.

[42]"Betamax," 8 N.Y.U. Rev. L. Soc. Chge at 60-62.

[43]Wainwright Securities v. Wall St. Transcript, 558 F.2d 91, 94 (C.A. N.Y. 1977). See also: Key Maps v. Pruitt, 470 F. Supp. 33, 37 (D.C. TX 1978); and "Betamax," 8 N.Y.U. Rev. L. Soc. Chge. at 47.

[44]Time, Inc. v. Geis Assocs., 293 F. Supp. 130, 144 (D.C. N.Y. 1968); See Meeropol v. Nizer, F.2d 1061, 1068 (C.A. N.Y. 1977).

[45]17 U.S.C.§107 (1976). See: Keep Thompson v. Gallen, 457 F. Supp. 957, 960 (D.C. N.H. 1978); "Betamax," 8 N.Y.U. Rev. L. Soc. Chge. at 55; and the "Betamax case," Univ. City. Studies v. Sony, 480 F. Supp. 429, 449 (C.D. Cal. 1979).

[46]See: Triangle Pub. v. Knight-Ridder, 445 F. Supp. 875 (D.C. Fla. 1978); Rohauer v. Killiam Shows, 379 F. Supp. 723; Disney v. Air Pirates, 581 F. Supp. 751 (C.A. Cal. 1978); Key Maps, 470 F. Supp. 33; Encyc. Brit. v. Crooks, 447 F. Supp. 243 (D.C. N.Y. 1978); and Schroeder v. Morrow, 566 F.2d 213 (C.A. Ill. 1977); Stigwood v. O'Reilly, 346 F. Supp. 376.

[47]The "Betamax case," 480 F. Supp. at 451,454.

[48]"Betamax," 8 N.Y.U. Rev. L. Soc. Change at 53. See Key Maps, 470 F. Supp. at 38; and Time, 293 F. Supp. at 146.

[49]"Betamax," 8 N.Y.U. Rev. L. Soc. Chge at 47, 49.

[50]Time, 293 F. Supp. at 146.

[51]N.Y. Times v. Roxbury Data, 434 F. Supp. 217, 221 (D.C. N.Y. 1977).

[52]Iowa St. U. Res. Fd. v ABC, 463 F. Supp. 902, 905 (D.C. N.Y. 1978). See Meeropal, 560 F.2d at 1069.

[53]Mura v. CBS, 245 F. Supp. 587, 590 (D.C. N.Y. 1965), and Loew's, Inc. v. CBS, 131 F. Supp. 165, 184 (D.C. Cal. 1955).

[54]F. Hopengarten, "Direct Reception: The New Frontier,"

Communications--Engineering Digest, July, 1980, p. 92; and Hopengarten, "Out-lawed Shortwave," p. 39.

[55]"Betamax," 8 N.Y.U. Rev. L. Soc. Chge at 51.

[56]Meredith v. Harper and Row, 378 F. Supp. 686, 690 (D.C. N.Y. 1974).

[57]The "Betamax case," 480 F. Supp. at 432.

[58]S. Timberg, "A Modified Fair Use Code," in Fair Use and Free Inquiry, ed. by Lawrence and Timberg (Norwood, N.J.: Ablex, 1980), p. 342.

[59]Ibid., and "Betamax," 8 N.Y.U. Rev. L. Soc. Chge. at 48.

[60]"Betamax," 8 N.Y.U. Rev. L. Soc. Chge at 48.

[61]A. Miller, "The Privacy Revolution," 19 Washburn L.J. 1, 4 (1979); and Brandeis, 4 Harv. L. Rev. 193, 195 (1890).

[62]R. Gavison, "Privacy and the Limitations of the Law," 89 Yale L.J. 421, 423, 455[illegible] See Boyd v. U.S. 116 U.S. 616, 630 (1886).

[63]Miller, "The Privacy Revolution," p. 7.

[64]H. Raleigh, "Invasion of Privacy," 47 Notre Dame L. 1067, 1069 (1972). See W. Prosser, The Law of Torts (4th ed.; St. Paul: West Publ. Co., 1971), p. 808.

[65]Prosser, Torts, p. 816.

[66]Griswold v. CT., 381 U.S. 479, 85 S.Ct. 1678, 1680-81 (1965). See: L. Lusky, "Inv. of Priv.: Clarif. of Concepts," 72 Colum. L. Rev. 693, 706 (1972).

[67]VanAlstyne, Karst, and Gerard, Const. Law: the Sum and Substance, (Center for Creative Educ. Serv. 1976), p. 381. See: Lusky, "Clarification," pps. 693, 709.

For a better view of what interests are considered to be within the constitutional right of privacy, it is helpful to look at some of the actions brought under the Civil Rights Act. 42 U.S.C. §1983 (1970). In Monroe v. Pape, 365 U.S. 167 (1961) the Court held that an illegal search by Chicago police was a violation of plaintiff's constitutional rights and therefore within the coverage of 42 U.S.C. §1983. In that case thirteen police officers, with no warrant, broke into plaintiff's home, roused them from bed, forced them to stand naked in the living room and ransacked the entire house. Id. at 169. In York v. Story, 324 F.2d 450 (9th Cir. 1963), police officers coerced the plaintiff, who came to the police station to lodge a complaint, to be photographed in various indecent poses and subsequently circulated the pictures among other police

personnel. The court ruled that plaintiff's constitutional right of privacy had been invaded and that the police conduct was actionable under 42 U.S.C. §1983. In Travers v. Paton, 261 F. Supp. 110 (D. Conn. 1966), the court refused to find that secret filming and recording of plaintiff's parole hearing was a violation of his constitutional right of privacy. The court distinguished York on the grounds that the invasion there was of a nature that enraged the community's sense of dignity. The court noted, however, that the elements of privacy found in Mapp and Rochin were examples of interests that were clearly protected by the Constitution. Id. at 113. Similarly, in Mattheis v. Hoyt, 136 F. Supp. 119 (W.D. Mich 1955), a prisoner who sought damages against a police chief and magazine publisher for publishing a story of his criminal activities was not allowed to bring his action under 42 U.S.C. §1983 because the court found that the publication did not violate a federally protected right. The court in Davis v. Firment, 269 F. Supp. 524 (E.D. La. 1967), refused to classify the right of free choice in grooming as a constitutionally protected right of privacy and interpreted the Griswold case as granting protection only to those rights that are so sacred as to be fundamental. While the courts have refused to expand the constitutional right or privacy beyond those rights that are considered "fundamental" Griswold v. Connecticut 381 U.S. 479 (1965), or "traditionally regarded as private in nature," United States v. Laub Baking Co., 283 F. Supp. 217, 228 (N.D. Ohio 1968), it is clear that an individual's right to be free from unreasonable search and seizure is a right which is considered to exemplify one's fundamental right of privacy. E.g., Felber v. Foote, 321 F. Supp. 85 (D. Conn. 1970); Travers v. Paton, 261 F. Supp. 110 (D. Conn. 1966); Wolf v. Colorado, 338 U.S. 25 (1949).

[68]"Privacy and the Law," Report by British Section of International Commission of Justice. Paragraph 19 (1970), and Lusky, "Clarification," p. 701.

[69]Gavison, "Limitations," p. 457.

[70]Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243, 1248-49 (1969).

[71]Ravin v. Alaska, 537 P.2d 494 (Alaska 1975). See: V. Miles, "Const. Law--Proh. of Marijuana," 19 Howard L.J. 190, 190 (1976), and D. Rohrer, "Possession of Marijuana," 1976 Wisc. L. Rev. 305, 325 (1976).

[72]Miles, "Proh. of Marijuana," p. 194, See: NORML v. Bell, 488 F. Supp. 123, 134 (1980).

[73]Miles, "Prohibition," pp. 194, 203. See also: J. Tack, "Rt. of Priv--Poss. of JM," 15 Washburn L.J. 491, 495 (1976), and Rohrer, "Marijuana," p. 323.

[74]Rohrer, "Marijuana," p. 325. See: NORML, 488 F. Supp.

at 123, 132, 133, and Washington v. Smith, 610 P.2d 869, 880, 881, (S.Ct. W.A. 1980).

[75]NORML, 488 F. Supp. at 133.

[76]F. Hopengarten, "Since You Asked Me," CableVision, January, 1980, p. 133.

[77]Kansas v. Platton, 594 P.2d 201, 205 (Kan. 1979), and U.S. v. Houle, 603 F.2d 1297, 1299 (1979). See United States v. United States District Court 407 U.S. 297, 313, 92 S.Ct. 820, 46 L.Ed.2d 498 (1972) (entry of the home is the chief evil against which the Fourth Amendment is directed); Stanley v. Georgia, 394 U.S. 557, 564, 89 S.Ct. 1243, 22 L.Ed.2d 542 (1969) (the right to be free, except in limited circumstances, from unwarranted governmental intrusions into the privacy of the home is fundamental to our free society); Silverman v. United States, 365 U.S. 505, 511, 81 S.Ct. 679, 683, 5L.Ed.2d 7B4 (1961) (at the core of the Fourth Amendment "stands the right of a man to retreat into his own home and there be free from unreasonable governmental intrusion."); Mapp v. Ohio, 367 U.S. 643, 646, 81 S.Ct. 1684, 1687, 6 L.Ed.2d 1081 (1961) (Fourth Amendment applies "to all (governmental) invasions. . . of the sanctity of a man's home and the privacies of life."); Wolf v. Colorado, 3B8 U.S. 25, 27-28, 69 S.Ct. 1B59, 1B61, 93 L.Ed. 1782 (1949) (security of privacy in the home against arbitrary governmental intrusion is basic to a free society); McDonald v. United States, 335, U.S. 451, 455-56, 69 S.Ct. 191, 93 L.Ed. 153 (1948) (the right of privacy in the home is too precious to entrust to police discretion and absent some grave emergency the Constitution requires magistrate's approval before the police may violate the privacy of the home); Johnson v. United States, 333 U.S. 10, 14-15, 68 S.Ct. 367, 92 L.Ed. 436 (1948) (when the right or privacy in the home must yield to the right of search is to be decided by a judicial officer absent exceptional circumstances).

[78]Raleigh. "Invasion of Privacy," p. 1072. See: Bell v. Wolfish, 99 S.Ct. 1861, 1884 (1979), and Cavaness v. Oklahoma, 581 P.2d 475, 477 (Okla. 1978).

[79]Platten, 594 P.2d at 205, and California v. Orange Co., 109 Cal-Rptr. 143, 147 (1973).

[80]U.S. v. Berryman, 468 F. Supp. 793, 796 (E.D. Va. 1979).

[81]Orange Co., 109 Cal-Rptr. at 148. See: Spinelli v. U.S., 89 S.Ct. 584, 587, 589 (1969), and Franks v. Delaware, 98 S.Ct. 2674, 2681 (1978).

[82]Franks, 98 S.Ct. at 2685.

[83]For cases construing search and seizure, see: U.S. v.

Martinez-Fuerte, 96 S.Ct. 3074, 3084 (1976); Camara v. Municipal Court, 387 U.S. 523, 538, 82 S.Ct. 1727, 1736 (1969); Caraness, 581 P.2d at 477, 478; Orange Co., 109 Cal. Rptr. at 145; Roaden v. Kentucky, 93 S.Ct. 2796, 2796 (1973); Berryman, 468 F. Supp. at 793; Bell, 99 S.Ct. at 1883, and Spinelli, 89 S.Ct. at 584, 588.

[84]Federal Communications Commission, First Report and Order, "In the matter of the Regul. of Dom. Rec.-Only Satell. Earth Stas., "cc Dkt. No. 78-374 (October 18, 1979). See also: Pellegrin, "Continuing Respons., " pp. 37-8 Reitmeister v. Reitmeister, 162 F.2d 691, 694 (2d Cir. 1947); 74 F.C.C. 205-216; Chumney v. Nixon, 615 F.2d 389, 392 (1980); and Huffman, "Boom or Bane," p. 25.

[85]Hopengarten, "Since You Asked," p. 133, and Huffman, "Boom or Bane," p. 28.

[86]"Commission Deregs. R-O Tms.," Satell. Comm., December, 1979, p. 22, See: Hopengarten, "Short-wave Listening," p. 46.

[87]Huffman, "Boom or Bane," p. 25, 26; and Pellegrin, "Continuing Respons.," p. 38.

[88]The "Betamax case," 480 F. Supp. at 433.

[89]Pellegrin, "Cont. Resp.," p. 38; and Hopengarten, "Out lawed Short-wave," p. 42.

[90]Cong. Rec.--Hse. 6120 (7-2-1980); H.R. 7747, 96th Cong., 2d Sess., sec. 6(a) (7-2-1980).

Selected Bibliography

Periodicals/Books

Aleinikoff, E. "Fair Use and Broadcasting." Fair Use and Free Inquiry. Edited by J. Lawrence and B. Timberg. Norwood N.J.: Ablex Publ-Corp., 1980, pp. 180-191.

Brandeis. Harv. L. Rev. 4 (1890) 193.

CableVision, September 10, 1979, p. 14.

"Commission Deregulates Receive-Only Terminals." Satell. Communications, December, 1979, pp. 18-22.

"Communications Satellites: The Birds are in Full Flight," Broadcasting, November 19, 1979, pps. 36-47.

"Cooper, Robert. "The TV Den." Video, October, 1979, pp. 44-45, 78-84.

"Copyright: Gone with Betamax." N.Y.U. Rev. L. and Soc. Change, 8 (1978-79), 45-62.

Gavison, R. "Privacy and the Limitations of the Law." Yale L.J., 89 (1980), 421.

Hopengarten, Fred. CQ--The Radio Amateur's Journal, August, 1980, pp. 45-46.

----------"Direct Reception: the New Frontier." Communications Engineering Digest, July, 1980, pps. 91-93.

----------"Since You Asked Me." CableVision, January, 1980, p. 133.

----------"They Haven't Out-lawed Short-wave Yet." Satell. Communications, December, 1979, pps. 36-42

Huffman, Lucy. "Home Satellite Terminals--Boom or Bane?" Satell. Comm., December, 1979, pps. 24-28.

Lusky, L. "Invasion of Privacy: A Clarification of Concepts." Columbia L. Rev., 72 (1972), 693-706.

Miles, V. "Const. Law--Prohibition of Marijuana." Howard L.J. 19 (1976), 190.

Miller, A. "The Privacy Revolution." Washburn L.J. 19 (1979), 1.

"On Nimmer on Copyright." UCLA L. Rev. 26 (1979), 925.

Pellegrin, John. "Continuing Responsibilities in a Deregulated Environment." Satell. Comm., December, 1979, pps. 36-42.

Prosser, Wm. The Law of Torts. 4th ed. St. Paul; West Publ. Co., 1971.

Raleigh, H. "Invasion of Privacy." Notre Dame L. 47 (1972), 1067.

Rohrer, D. "Possession of Marijuana." Wisc. L. Rev. 1976 (1976) 305-325.

Satellite Communications, December, 1979, pps. 36-42.

Tack, J. "Right of Privacy--Possession of Marijuana." Washburn L.J. 15 (1976), 491.

Timberg, S. "A Modified Fair Use Code." Fair Use and Free Inquiry. Edited by Lawrence and Timberg. Norwood, N.J.: Ablex, 1980, pps. 311-343.

VanAlstyne, Karst, and Gerard. Constitutional Law: the Sum and Substance. Center for Creative Educ. Serv., 1976.

Case Law

Benamti v. U.S., 355 U.S. 96, 78 S.Ct. 155. (dele)

"Betamax case," Univ. City Studios v. Sony, 480 F. Supp. 429 (D.C. Cal. 1979).

California v. Orange Co., 109 Cal Rptr. 143 (1973).

Franks, v. Delaware, 98 S.Ct. 2674 (1978).

Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678 (1965).

HBO v. Pay-TV of Greater N.Y., 467 F. Supp. 525 (E.D. N.Y. 1979).

Iowa St. U. Res. Fdtn. v. ABC, 463 F. Supp. 902 (D.C. N.Y. 1978).

Kansas v. Platten, 594 P.2d 201 (Kan. 1979).

KMLA Broadcasting Copr. v. 20th Century Cigarette Vending Corp., 264 F. Supp. 35 (D.C. Cal 1967).

Kratz v. Kratz, 477 F. Supp. 463 (E.D. Pa. 1979).

Loew's Inc. v. CBS, 131 F. Supp. 165 (D.C. Cal. 1955).

Meredith v. Harper and Row, 378 F. Supp. 686 (D.C. N.Y. 1976).

Midwest Video Corp. v. FCC, 571 F.2d 1025 (8th Cir. 1978)

Mura v. CBS, 245 F. Supp. 587 (D.C. N.Y. 1965).

Nardone v. U.S., 302 U.S., 58 S.Ct. 275 (1937).

N.Y. Times v. Roxbury Data, 434 F. Supp. 217 (D.C. N.Y. 1977).

NORML v. Bell, 488 F. Supp. 123 (1980).

Orth-O-Vision v. HBO, 474 F. Supp. 673 (S.D. N.Y. 1979).

Pugash v. Klein, 193 F. Supp. 630 (D.C. N.Y. 1961).

Ravin v. Alaska, 537 P.2d 494 (Alaska, 1975).

Reitmeister v. Reitmesiter, 162 F.2d 691 (2d Cir. 1947).

Spinelli v. U.S., 89 S.Ct. 584 (1969).

Stanley v. Georgia, 394 U.S. 557, 89 S.Ct. 1243 (1969).

Time v. Geis Assocs., 293 F. Supp. 130 (D.C. N.Y. 1968).

20th Century Music Corp. v. Aiken, 422 U.S. 156, 95 S.Ct. 2044.

U.S. v. Berryman, 468 F. Supp. 793 (E.D. Va. 1979).

U.S. v. Cuvello, 410 F.2d 536 (C.A. N.Y. 1969).

U.S. v. Gruber, 123 F.2d 307 (C.C.A. N.Y. 1941).

U.S. v. Kusso, 250 F. Supp. 55 (D.C. Pa. 1966).

U.S. v. Polakoff, 112 F.2d 888 (C.C.A. N.Y. 1940).

Univ. City Studios v. Sony, 480 F. Supp. 429 (C.D. Cal. 1979).

Wainwright Securities v. Wall St. Transcript, 558 F.2d 91 (C.A. N.Y. 1977).

Documents

Cong. Rec.--House, 6120 (July 2, 1980).

Federal Communications Commission. Report No. 15268. "FCC Deregulates Domestic Satell. Receive-Only Earth Stations." Dkt. No. 78-374.

Ferris, Charles. "Separate Statement of Chairman, In Re: Deregulation of Receive-Only Domestic Earth Stations," October 18, 1979.

Federal Communications Commission. First Report and Order, "In the Matter of the Regul. of Dom. Rec-Only Earth Stas." CC Dkt. No. 78-374 (October 18, 1979).

Federal Register. "Unauthorized Interception and Use of Satell. Transmissions." 43 (Oct. 10, 1978) 46581-82.

H.R. 7747. 96th Cong. 2d Sess. Sec. 6(a), July 2, 1980.

H.R. Rep. No. 1850. 73d Cong. 2d Sess. 9776, Je. 1, 1934.
H. R. Rep. No. 1850. 69th Cong. 2d Sess. 8688, 1927.
H.R. Rep. No. 1918. 73d Cong. 2d Sess. 9776, 1934.

"Privacy and the Law," Report by British Section of Int'l Com'sn. of Justice. Paragraph 19 (1970).

Sen. Rep. No. 781. 73d Cong. 2d Sess. 9770 (1934).

United States Tower Co., July 10, 1980 Price List, P.O. "S," Afton, Okla. 74331.